Office-Supreme Court, U.S.
FILED
FEB 3 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-955

In The

Supreme Court of the United States

October Term, 1982

ISABEL WOOD and JONATHAN L. HAAS,

Petitioners,

v.

CHARLES H. LEIST, JR. and LAURA N. LEIST;
ROBERT E. JONES, JR. and MARILYN JONES;
HUGH W. HULL and LYNN HULL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS LEIST

Don C. Stevens II
(Counsel of Record)
JONES, TEILBORG, SANDERS,
HAGA & PARKS, P.C.
101 N. First Avenue, Suite 2900
Phoenix, Arizona 85003
(602) 251-2758
Attorneys for Respondents Leist

QUESTIONS PRESENTED

Although the "questions presented" set forth in the Petition for Writ of Certiorari filed on behalf of Isabel Wood and Jonathan L. Haas seems to seek redress for a new civil rights violation arising from the issuance of the Memorandum Decision of the Court of Appeals for the Ninth Circuit, it is obvious that Petitioners are simply seeking further appellate review of the questions presented to the Court of Appeals. It is respectfully submitted that those questions are as follows:

1. Did Petitioners state a valid cause of action pursuant to 42 United States Code, §§ 1985(2) and 1985(3) arising out of conduct occurring in connection with a state court proceeding?
2. Did Petitioners state a valid cause of action pursuant to 42 United States Code, § 1983?

Respondents Leist respectfully submit that any other issues are not appropriately raised through a Petition for Writ of Certiorari and were unintentionally included by these Petitioners, who are appearing *in propria persona.*

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	1
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE AND FACTS	2
REASONS WHY THE WRIT SHOULD BE DENIED	3
1. Petitioners have not demonstrated reasons, of the character required by Rule 17, why a writ of certiorari should be granted.	3
CONCLUSION	5

TABLE OF AUTHORITIES

Cases:	*Page*
Baker v. McCollom, 443 U.S. 137 (1979)	4
Butler v. Goldblatt Brothers, Inc., 589 F.2d 323 (7th Cir. 1978)	4
Griffin v. Breckenridge, 403 U.S. 88 (1971)	3
Rutledge v. Arizona Board of Regents, 660 F.2d 1345 (9th Cir. 1981), *cert. granted*, 1973 L. Ed. 2d 1382 (1982)	4
Statutes:	
United States Code, Title 42,	
§ 1983	I,4
§ 1985(2)	I,3,4
§ 1985(3)	I,3,4
Rules:	
Rules of the Supreme Court of the United States,	
Rule 17	3,5
Rules of the U. S. Court of Appeals for the Ninth Circuit,	
Rule 21(b)	4

No. 82-955

In The

Supreme Court of the United States

October Term, 1982

ISABEL WOOD and JONATHAN L. HAAS,

Petitioners,

v.

CHARLES H. LEIST, JR. and LAURA N. LEIST;
ROBERT E. JONES, JR. and MARILYN JONES;
HUGH W. HULL and LYNN HULL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS LEIST

Respondents, Charles H. Leist, Jr. and Laura N. Leist, respectfully request that the Court deny the Petition for Writ of Certiorari, seeking review of the decision of the United States Court of Appeals for the Ninth Circuit. A copy of the unpublished Memorandum Decision of the Court of Appeals was included in the appendix of the Petitioners' Brief.

STATEMENT OF THE CASE AND FACTS

Respondents Leist submit that the factual setting upon which Petitioners' claims were based, and the course of the proceedings below were not in serious dispute and are more than adequately set forth in the Memorandum Decision of the Court of Appeals for the Ninth Circuit. Respondents Leist take issue with the Petitioners' "statement of the case", appearing at pages 3-10 of the Petition as being unsupported, in large part, by any facts which are part of the record. The statement of the case as it relates to Respondents Leist are that following the filing of an Answer to the Complaint, Respondents Leist moved for summary judgment on April 20, 1981, and that motion was granted on June 5, 1981. Timely notice of appeal was filed by Petitioners herein from the judgment in favor of Respondents Leist.

As previously indicated, the facts are contained in the Memorandum Decision of the Ninth Circuit Court of Appeals, but it is undisputed that a valid and outstanding warrant for Haas' arrest existed and he was therefore subject to arrest at any time when found by any police officer. Furthermore, it is undisputed that Petitioners do not have, and have not made any appropriate claims that state, local or national law enforcement computer records regarding criminal arrests and warrants are constitutionally protected from inquiry by police officers, or that Petitioner Haas had any protectable privacy interest in such records maintained by law enforcement agencies regarding outstanding arrest warrants.

REASONS WHY THE WRIT SHOULD BE DENIED

1. *Petitioners have not demonstrated reasons, of the character required by Rule 17, why a writ of certiorari should be granted.*

In petitioning this Court for a writ of certiorari, United States Supreme Court Rule 17 requires petitioners to demonstrate the "special and important reasons" for the Court to issue the requested writ. Respondents Leist submit that none of the considerations found in Rule 17 apply in this case. For instance, there is no contention by Petitioners that the Memorandum Decision of the Court of Appeals for the Ninth Circuit or the basis for the court's reasoning, is in conflict with any of its other decisions, or the decision of any other circuit. Nor have Petitioners demonstrated any conflict of the Ninth Circuit's Decision with the applicable decisions of this Court. Finally, Respondents Leist submit that the Court of Appeals for the Ninth Circuit did not decide any important questions of federal law not previously decided upon by this Court, but rather simply applied previous decisions of this Court to the factual circumstances which were presented to it.

Petitioners recognize that the Court of Appeals properly applied this Court's holding in *Griffin v. Breckenridge*, 403 U.S. 88 (1971), with respect to their claims under 42 U.S. Code §§ 1985(2) and 1985(3). There is simply no basis for the Court to reconsider or overrule that sound decision because Petitioners have done nothing more than to attempt to create a new "class", which is nothing more than a large amorphous group of as yet unidentified people who may some day become witnesses in civil proceedings. Petitioners have failed to show any basis whatsoever that a class based, invidiously discriminatory animus was present involving any of the respondents herein and have failed to state a cause of

action pursuant to 42 U.S. Code §§ 1985(2) and 1985(3). *Rutledge v. Arizona Board of Regents*, 660 F.2d 1345 (9th Cir. 1981), *cert. granted*, 1973 L. Ed. 2d 1382 (1982).

The Ninth Circuit Court of Appeals correctly found that the constitutional rights of Petitioners Isabel Wood and Jonathan L. Haas were not violated, and their Complaint did not, therefore, state a cause of action under 42 U.S. Code § 1983. Petitioners apparently urge the Court to overrule *Baker v. McCollom*, 443 U.S. 137 (1979) and establish a federal cause of action even though it is undisputed that there was an outstanding warrant for Mr. Haas and it was at least facially valid. Respondent Leist, in this case, did nothing to violate the rights of either of the Petitioners herein, and did nothing more than to provide information to police officers who acted on their own initiative in arresting Mr. Haas.

The decision of the Seventh Circuit Court of Appeals in *Butler v. Goldblatt Brothers, Inc.*, 589 F.2d 323 (7th Cir. (1978) raises similar factual circumstances and reached the appropriate conclusion that a person supplying information to police officers does not deprive the plaintiff of any right under color of state law and a complaint based upon such action will not state a cause of action under 42 U.S. Code § 1983. Moreover, it has never been disputed that on the day Mr. Haas was arrested, the trial involving Isabel Wood was continued to a later date and except in response to a suggestion made during oral argument before the Ninth Circuit Court of Appeals, Petitioners have never demonstrated any reason why Mr. Haas did not testify at the subsequent trial, or that Isabel Wood at any later time raised any issue with respect to Mr. Haas' unavailability.

Finally, as noted in the brief in opposition for Respondents Jones, the Ninth Circuit Court of Appeals filed a Memorandum Decision, which under Rule 21(b), Rules of the United

States Court of Appeals for the Ninth Circuit, is appropriate only when the case presents no legal issues of unique interest or substantial public importance and does not establish, modify, clarify or criticize an existing rule of law. It is clear that the Ninth Circuit Court of Appeals was not presented with any such important issue and the Ninth Circuit was correct in finding Petitioners' appeal was one appropriate for such an unpublished disposition. Petitioners have been afforded a full and fair opportunity both at the trial court and before the Ninth Circuit Court of Appeals to air any complaints they had arising out of the underlying civil litigation. Petitioners were given the benefit of every doubt and a review of the issues raised and the resolutions of these issues by the lower courts demonstrate Petitioners' case was considered fully and fairly, and found to be without merit.

CONCLUSION

Respondents Leist respectfully submit that Petitioners have utterly failed to demonstrate any reason for the issuance of a Writ of Certiorari to allow review of this case. Petitioners have failed to supply even the vaguest inference of the presence of the consideration outlined in Rule 17 as being present. Petitioners have also failed to show that their case was not fully considered and correctly decided on the merits, and Respondents Leist therefore respectfully submit the Petition for Writ of Certiorari should be denied.

Respectfully submitted this 31st day of January, 1983.

JONES, TEILBORG, SANDERS,
HAGA & PARKS, P.C.

By Don C. Stevens II
Attorneys for Respondents Leist